

United States
Circuit Court of Appeals

For the Ninth Circuit. 10

LAU SHEE, also Known as LOW FOOK YUNG,
also Known as NGONG FON, and also
Known as LOW SHEE,

Appellant,

vs.

JOHN D. NAGLE, as Commissioner of Immigra-
tion of the Port of San Francisco,

Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the United
States District Court for the Northern District
of California, Second Division.

FILED

MAY 14 1927

F. D. MONCKTON,
CLERK.

United States
Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

For Petitioner and Appellant:

EMERY F. MITCHELL, Esq., 640 State
Bldg., San Francisco, California.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Fran-
cisco, Cal.

In the Southern Division of the United States
District Court for the Northern District of
California, Second Division.

No. 19,212.

In the Matter of LAU SHEE, also Known as LOW
FOOK YUNG, also Known as NGONG FON
and also Known as LOW SHEE, on Habeas
Corpus.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

Sir: Please make copies of the following papers
to be used in preparing transcript on appeal:

1. Petition for writ of habeas corpus.
2. Order to show cause.
3. Demurrer to petition.
4. Minute order denying petition and sustaining demurrer.
5. Judgment and order dismissing order to show cause and denying petition for writ.
6. Notice of appeal.

7. Petition for appeal.
8. Order allowing appeal and fixing bonds.
9. Assignment of errors.
10. Order regarding Immigration Record.
11. Clerk's certificate.
12. Citation on appeal.

EMERY F. MITCHELL,
Attorney for Petitioner and Appellant.

[Endorsed]: Receipt of a copy of the within praeceipe is hereby admitted this 10th day of April, 1927.

GEO. J. HATFIELD,
United States Attorney.

Filed Apr. 14, 1927. [1*]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

19,212.

In the Matter of LOW FOOK YUNG, *alias* LAU SHEE, or LAW SHEE, *alias* AH YOUNG, *alias* NGONG FON, or LOW SHEE. No. 12020/6392.

PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable United States District Judge
Now Presiding in the United States District
Court in and for the Northern District of Cali-
fornia, Second Division:

*Page-number appearing at the foot of page of original certified Transcript of Record.

It is respectfully shown by the petition of the undersigned that Low Fook Yung, *alias* Lau Shee, or Law Shee, *alias* Ah Young, *alias* Ngong Fon, or Low Shee, hereinafter in this petition referred to as the "Detained," is unlawfully imprisoned, detained, confined and restrained of her liberty by John D. Nagle, Commissioner of Immigration for the Port of San Francisco, at the Immigration Station at Angel Island, County of Marin, State and Northern District of California, Southern Division thereof, and that the said imprisonment, confinement and restraint is illegal, and that the illegality thereof consists in this, to wit, that it is claimed by the said Commissioner that the said Detained is an alien Chinese person who is subject to be returned to the country whence she came under section 19 of the Immigration Act of February 5, 1917, being subject to deportation under the provisions of a law of the United States, to wit, the Chinese Exclusion Law, in that she has been found in the United States in violation of Rule 9, Chinese rules, and of the Supreme Court decisions upon which said rule is based, having secured admission by fraud, not having been, at the time of entry, the wife of a member of the exempt classes, and the said alien has been found in the United States in violation of the Immigration Act of February 5, 1917, in that she entered the United States for an [2] immoral purpose.

It is further claimed by the said Commissioner that the said Detained was arrested on executive warrant of arrest issued by the Secretary of Labor

to answer the said charges, and that after a hearing thereon, which the said Commissioner claims was made and had in full and complete accordance with the provisions of the acts aforesaid, the detained was found to have secured admission by fraud, not having been, at the time of entry, the wife of a member of the exempt classes, and that she entered the United States for an immoral purpose and was ordered deported from and out of the United States for said reasons, and that therefore he, the said Commissioner, intends to deport the said detained away from and out of the United States to the Republic of China, and unless this Court intervenes as hereinafter in this petition prayed for, said detained will be deported from and out of the United States.

But, on the contrary, your petitioner alleges upon his information and belief that the action of the said secretary in issuing said warrant, and in the hearing conducted upon and under said warrant, and in his issuing said order of deportation against the said detained, abused the discretion vested in him, and has made a misconstruction of the statute of the prejudice of the said detained in each of the following particulars hereinafter set forth:

Your petitioner alleges that the said detained arrived in the United States as an incoming passenger on the steamship "President Jackson" at the port of Seattle on the 29th day of September, 1923, and that said detained was thereafter admitted into the United States as the wife of Jew Shepp, an American citizen. That ever since said

time the said detained has been at liberty in the United States [3] and has never since departed therefrom.

Your petitioner further alleges upon his information and belief that there was no legal or any evidence whatever to support said warrant of deportation presented to said Commissioner of Immigration or to said Secretary of Labor that the said detained secured admission to the United States by fraud or that the said detained entered the United States for an immoral purpose, or that she ever was at any time guilty of a single act of immorality.

Your petitioner further alleges upon his information and belief that the so-called evidence presented and introduced against the detained, and upon which the pretended warrant was based, to wit, the letter of R. P. Bonham was presented and introduced notwithstanding the fact that said detained objected to the admission of said evidence, and requested that it be stricken out and destroyed, but that nevertheless it was introduced as aforesaid. That said detained further requested said Commissioner to produce the said R. P. Bonham for the purpose of cross-examination, but that said Commissioner wholly failed so to do.

Your petition further alleges upon his information and belief that the so-called evidence presented and introduced against the detained and upon which the pretended warrant of deportation was based, consists of hearsay statements and private reports and other evidence of incompetent, immaterial and

irrelevant character not permitted to be admitted in the courts of justice in the United States, State and Federal.

Your petitioner further alleges upon his information and belief that the said detained was and is ordered deported without due or any process of law or proof of any kind or character proving or tending to prove the alleged charge made against her, and that said detained was not afforded a fair hearing to which she was and is entitled. [4]

That the said detained is in the custody of the said Commissioner and for said reason is unable to verify this petition upon her own behalf and therefore your petitioner does verify this petition upon her own behalf and therefore your petitioner does verify this petition upon behalf of the detained and in her name.

That your petitioner further alleges that the said detained was at all times during her residence in the United States a woman of respectability and good character, and that she has at no time followed any immoral occupation or engaged in any immoral or debasing pursuits.

That your petitioner has not in his possession the record of testimony submitted upon the examination of the case of said detained under direction of the said Commissioner of Immigration, nor any copy of the reports rendered thereon, nor copies of the proceedings had before the Secretary of Labor at Washington, and a copy of said proceedings being in the possession of the said Commissioner of Immigration, your petitioner does there-

fore stipulate that when a copy of the said proceedings is brought before this court and produced by the Immigration authorities in accordance with their custom and practice in cases of this character, that your petitioner will then and there agree and ask that the said immigration record so presented be deemed and considered part and parcel of this petition with the same force and effect as if filed herewith.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein as prayed for directed to the Commissioner of Immigration, and directing him to hold the body of the said detained within the jurisdiction of this court and present the body of the said detained before this court at [5] a time and place to be specified in said order, together with the time and cause of her detention, so that the same may be inquired into, all to the end that the said detained may be permitted to remain in the United States, having a lawful right to said privilege, and that she may thereafter go hence.

HENRY F. MITCHELL,
Attorney for Petitioner.

State of California,
City and County of San Francisco,—ss.

William Shep, being duly sworn, deposes and says: That he is the petitioner named in the foregoing petition and he has read said petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters

therein stated upon information and belief, and as to those matters he believes it to be true.

WILLIAM SHEP.

Subscribed and sworn to before me this 4th day of February, 1927.

[Seal] CHARLES D. O'CONNOR,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Receipt of a copy of the within petition is hereby admitted this 5th day of February, 1927.

GEO. J. HATFIELD,
U. S. Attorney.

Filed Feb. 4, 1927. [6]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

Upon reading and filing the verified petition of Low Fook Yung, *alias* Lau Shee, or Law Shee, *alias* Ah Young, *alias* Ngong Fon, or Low Shee, for a writ of habeas corpus, and

Good cause appearing therefor, IT IS HEREBY ORDERED that John D. Nagle, as Commissioner of Immigration at the port of San Francisco at Angel Island, be and appear before the above-entitled court, Department No. — thereof, on the 28th day of February, 1927, at the hour of ten o'clock A. M. of said day, to show cause, if any

he has, why a writ of habeas corpus should not issue in this matter and the petition granted as prayed; and

IT IS FURTHER ORDERED that said Low Fook Yung, *alias* Lau Shee, or Law Shee, *alias* Ah Yung, *alias* Ngong Fon, or Low Shee, be not removed from the jurisdiction of this court until further order of this court; and

IT IS FURTHER ORDERED that a copy of this order be served on said John D. Nagle or such other persons as may have the said Low Fook Yung, *alias* Lau Shee, or Law Shee, *alias* Ah Young, *alias* Ngong Fon, or Low Shee, in custody as an officer of said John D. Nagle.

IT IS FURTHER ORDERED that the said detained be admitted to bail upon furnishing a bond in the penal sum of [7] three thousand dollars, conditioned according to law to be approved by me.

Dated: February 5, 1927.

ST. SURE,
U. S. District Judge.

[Endorsed]: Receipt of a copy of the within order to show cause is hereby admitted this 5th day of February, 1927.

GEO. J. HATFIELD,
U. S. Attorney.

Filed Feb. 5, 1927. [8]

[Title of Court and Cause.]

DEMURRER TO PETITION FOR WRIT OF
HABEAS CORPUS.

Comes now the respondent, John D. Nagle, Commissioner of Immigration at the Port of San Francisco, in the Southern Division of the Northern District of California, and demurs to the petition for a writ of habeas corpus in the above-entitled cause and for grounds of demurrer alleges:

I.

That the said petition does not state facts sufficient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief thereon.

II.

That said petition is insufficient in that the statements therein relative to the record of the testimony taken on the hearing of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

GEO. J. HATFIELD,
United States Attorney,
By R. M. LYMAN, Jr.,
Asst. United States Attorney,
Attorneys for Respondent.

[Endorsed]: Filed Apr. 2, 1927. [9]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 2d day of April, in the year of our Lord one thousand nine hundred and twenty-seven. Present: The Honorable GEORGE M. BOURQUIN, District Judge for the District of Montana, designated to hold and holding this court.

No. 19,212.

In the Matter of LOW FOOK YUNG, on Habeas Corpus.

MINUTES OF COURT—APRIL 2, 1927—
ORDER SUBMITTING CAUSE.

This matter came on regularly for hearing on order to show cause as to the issuance of a writ of habeas corpus herein. R. M. Lyman, Jr., Esq., Asst. U. S. Atty., was present for and on behalf of respondent, and filed demurrer to petition, and all parties consenting thereto, it is ordered that the Immigration Records be filed as respondent's exhibits and that same be considered as part of original petition. Attorney for petitioner was present. After hearing said attorneys, the Court ordered that said matter be, and the same is hereby, submitted. Ordered that said petitioner have until Apr. 5, 1927, within which time to file brief. [10]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 8th day of April, in the year of our Lord one thousand nine hundred and twenty-seven. Present: The Honorable GEORGE M. BOURQUIN, District Judge for the District of Montana, Designated to Hold and Holding This Court.

No. 19,212.

In the Matter of LOW FOOK YUNG, etc., on Habeas Corpus.

MINUTES OF COURT—APRIL 8, 1927—
ORDER DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS.

Ordered that the petition for writ of habeas corpus herein be and the same is hereby dismissed.
[11]

OPINION.

Dismissed.

208 U. S. 11; 17 Fed. (2) 153; Quon Quon Case, U. S. Sup. Ct., Feb. 21, 1927.

April 8, 1927.

BOURQUIN, J. [12]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Clerk of the Above-entitled Court and to
the Honorable GEORGE J. HATFIELD,
United States Attorney for the Northern Dis-
trict of California:

You and each of you will please take notice that
Lau Shee, the detained herein, does hereby appeal
to the Circuit Court of Appeals of the United States
for the Ninth Circuit thereof, from the order made
and entered on the 8th day of April, 1927, denying
the petition for a writ of habeas corpus therein.

Dated: San Francisco, April 12, 1927.

EMERY F. MITCHELL,
Attorney for Petitioner and Appellant.

[Endorsed]: Receipt of a copy of the within
notice of appeal is hereby admitted this 12 day of
April, 1927.

GEO. J. HATFIELD,
United States Attorney.

Filed Apr. 14, 1927. [13]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now Lau Shee, the petitioner, appellant
herein, and says:

That on the 8th day of April, 1927, the above-

entitled court made and entered its order denying the petition for a writ of habeas corpus, as prayed for and filed herein, in which said order in the above-entitled cause certain errors were made to the prejudice of the appellant herein, all of which will more fully appear from the assignment of error on file herewith.

WHEREFORE, this appellant prays that an appeal may be granted in her behalf to the Circuit Court of Appeals of the United States for the Ninth Circuit thereof, and further, that a transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof.

Dated: San Francisco, April 12, 1927.

EMERY F. MITCHELL,
Attorney for Petitioner and Appellant Herein.

[Endorsed]: Receipt of a copy of the within petition for appeal is hereby admitted this 12th day of April, 1927.

GEO. J. HATFIELD,
United States Attorney.

Filed Apr. 14, 1927. [14]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now Lau Shee, the appellant herein, by her attorney, Emery F. Mitchell, Esq., in connection

with her petition for an appeal herein, and assigns the following errors which she avers occurred upon the hearing of the above-entitled cause, and upon which she will reply upon appeal to the Circuit Court of Appeals for the Ninth Circuit, to wit:

I.

That the Court erred in sustaining the demurrer and in denying the petition for a writ of habeas corpus herein.

II.

That the Court erred in holding that it had not jurisdiction to issue a writ of habeas corpus as prayed for in the petition herein.

III.

That the Court erred in not holding that the allegations contained in the petition herein for a writ of habeas corpus were sufficient in law to justify the granting and issuing of a writ of habeas corpus as prayed for in said petition.

WHEREFORE the appellant prays that the judgment and order of the United States District Court in and for the Northern District of California, made and entered herein in the office of the Clerk of the said Court on the 8th day of [15] April, 1927, sustaining the demurrer and discharging the order to show cause, and dismissing the petition for a writ of habeas corpus, be reversed, and that this cause be remanded to the lower court with instructions to discharge the said Lau Shee from custody or grant her a new trial before the

lower court by directing the issuance of the writ of habeas corpus, as prayed for in said petition.

Dated: San Francisco, April 12, 1927.

EMERY F. MITCHELL,
Attorney for Petitioner and Appellant.

[Endorsed]: Receipt of a copy of the within assignment of errors is hereby admitted this 12th day of April, 1927.

GEO. J. HATFIELD,
United States Attorney.

Filed Apr. 14, 1927. [16]

[Title of Court and Cause.]

ORDER ALLOWING PETITION FOR AP-
PEAL.

On this, the 12th day of April, 1927, comes Lau Shee, petitioner by her attorney, Emery F. Mitchell, Esq., and having previously filed herein, did present to this Court her petition praying for the allowance of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, intended to be urged and prosecuted by her and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may seem proper.

ON CONSIDERATION WHEREOF, the Court hereby allows the appeal herein prayed for and orders execution and remand stayed pending the hearing of the said case in the United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that pending the hearing of said case in the United States Circuit Court of Appeals for the Ninth Circuit that the detained, Lau Shee, will not be removed from the jurisdiction provided in her behalf is furnished a good and sufficient bond in amount of \$500, to secure her maintenance by the United States supplied and sureties to be approved in accordance with the statutes in [17] said cases made and provided, and the rules of this Court, stipulation for cost bond in the sum of Three Hundred (\$300) Dollars.

Dated: San Francisco, April 12, 1927.

BOURQUIN,
United States District Judge.

[Endorsed]: Receipt of a copy of the within order allowing petition for appeal is hereby admitted this 12th day of April, 1927.

GEO. J. HATFIELD,
United States Attorney.

Filed Apr. 14, 1927. [18]

[Title of Court and Cause.]

ORDER FOR TRANSMISSION OF ORIGINAL
EXHIBITS.

IT IS HEREBY ORDERED that the original Immigration Records of the evidence upon the hearing of the demurrer in the above-entitled matter may be transferred by the Clerk of this court and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, said transfer to be made at the time the record of appeal is certified to by this court.

Dated: San Francisco, April 12, 1927.

BOURQUIN,
United States District Judge.

[Endorsed]: Receipt of a copy of the within order is hereby admitted this 12th day of April, 1927.

GEO. J. HATFIELD,
United States Attorney.

Filed Apr. 14, 1927. [19]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 19 pages, numbered from 1 to 19, inclusive, contain a full, true and correct transcript of the records and

proceedings in the matter of Low Fook Yung, *alias*, etc., on Habeas Corpus, No. 19,212, as the same now remain on file and of record in this office.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of seven dollars and ninety cents (\$7.90), and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the original citation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 28th day of April, A. D. 1927.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,
Deputy Clerk. [20]

CITATION.

United States of America,—ss.

The President of the United States, to the Commissioner of Immigration of the Port of San Francisco, Hon. JOHN D. NAGLE, and to the United States Attorney for the Northern District of California, Hon. GEORGE J. HATFIELD, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an

order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, wherein Lau Shee, also known as Low Fook Yung, also known as Ngong Fon and also known as Low Shee, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

BOURQUIN,
United States Judge. [21]

United States of America,—ss.

On this 12 day of April, in the year of our Lord one thousand nine hundred and twenty-seven, personally appeared before me, Emery F. Mitchell, the subscriber, and makes oath that he delivered a true copy of the within citation to the United States Attorney.

Subscribed and sworn to before me at San Francisco, this 12th day of April, A. D. 1927.

Receipt of a copy of the within citation is hereby admitted this 12th day of April 1927.

GEO. J. HATFIELD,
United States Attorney.

[Endorsed]: Filed Apr. 14, 1927.

[Endorsed]: No. 5133. United States Circuit Court of Appeals for the Ninth Circuit. Lau Shee, also Known as Low Fook Yung, also Known as Ngong Fon, and also Known as Low Shee, Appellant, vs. John D. Nagle, as Commissioner of Immigration of the Port of San Francisco, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed April 28, 1927.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

